



Office of the Executive Officer

CONSENT CALENDAR

December 13, 2016

To: Honorable Chairperson and Members of the Successor Agency to the  
Redevelopment Agency

From: *DWR* Dee Williams-Ridley, Executive Officer

Submitted by: Paul Buddenhagen, Director, Health, Housing and Community Services

Subject: Forgiveness of Former Redevelopment Agency Loan and Release of Resale  
Restrictions on 1613 5<sup>th</sup> Street upon the Death of the Owner

RECOMMENDATION

Adopt a Resolution that upon Mr. Colman Ahern's death, the City will forgive the former Redevelopment Agency's deferred loan of \$77,000 plus accrued interest on his property at 1613 5<sup>th</sup> Street, and release the Agreement Regarding Resale Restrictions, with an Option to Repurchase (Resale Restriction).

FISCAL IMPACTS OF RECOMMENDATION

If Mr. Ahern continues to live in the property until November 5, 2017, the former Redevelopment Agency loan of \$77,000 plus accrued interest will be automatically and completely forgiven. Although the accrued interest alone is equal to approximately \$2 million, the amount owed to the City would be capped at the market value of the home (estimated at \$750,000) less Mr. Ahern's original down payment (\$3,900). This recommendation accelerates the forgiveness upon his death, but will not have any fiscal impacts.

CURRENT SITUATION AND ITS EFFECTS

In 1987, Colman Ahern and his partner, Cheryl Wade (deceased) purchased their home at 1613 5<sup>th</sup> Street through the former Redevelopment Agency's (RDA) D+E program. The RDA acquired homes in the D and E blocks in West Berkeley's Redevelopment Area in the 1970s with the intent of creating an industrial park, and later decided to sell the homes to low-income, first time homebuyers. Buyers were selected through a lottery and received loans to purchase and rehabilitate the properties.

The City, as the Successor Housing Agency to the former Redevelopment Agency, has one remaining loan on the property – the RDA Deferred Loan. The RDA Deferred Loan is a \$77,000 loan that has 12% interest, compounded annually. The loan is structured to automatically be forgiven for residents living in the properties for 30 years, which in Mr. Ahern's case will be November 2017. Unfortunately, as of the writing of this report, Mr. Ahern is in hospice and is unlikely to live until then. Staff recommend that the City forgive the loan in full upon his death, and release the resale restriction. These actions

would recognize that the public purpose of promoting long term residency has been achieved. Mr. Ahern has lived in the property for 29 years of a 30 year term and will only fail to be there for the full 30 years because of ill health and death. This action will honor his commitment and adherence to the program requirements and benefit his surviving relatives.

If the City takes no action and Mr. Ahern dies before November 2017, Mr. Ahern's estate would be responsible for finding an eligible buyer willing to accept the RDA Deferred Loan terms. Eligible buyers are limited to households with incomes of up to 80% of the area median income, and preference would be given to households with at least one physically disabled member. However, the terms are not competitive in today's market, and staff think that eligible buyers would be unwilling to assume a loan with a current estimated balance of over \$2 million that is only forgivable if they reside in the house for 30 years from the time of their purchase. If Mr. Ahern had surviving children or a spouse, the loan terms would allow them to stay in the home for another 11 months until the loan was forgiven and the resale restrictions expired, but he does not.

#### BACKGROUND

The Redevelopment Agency sold 9 homes in its D+E program in 1987, with the mutual aim of providing affordable ownership opportunities to first-time homebuyers and renovating dilapidated homes.

D+ E homes were subsidized by three loans:

- HUD 312 Loan: The City originated these loans, but HUD funded and serviced loans of up to \$33,500 that were used for renovation costs. The amortizing loans carried a 3% simple interest, and matured after 20 years.
- RDA Renovation Loan: The former RDA provided a second loan, also for renovation costs. The amortizing loans carried a 10% compounding interest and matured after 20 years. Mr. Ahern repaid the RDA Renovation Loan in 1993.
- RDA Deferred Loan: The former RDA also provided a third loan, which represented the difference between the appraised value of the home and the sum of the borrower's downpayment and first two loans. The loan was structured as a deferred loan, with payment due only upon transfer to an ineligible purchaser. The loan accrued 12% interest, compounded annually, and in all but one case was structured to be completely forgiven if the borrower occupied the property for the full 30 year term.

The properties were further encumbered with a 35-year Resale Restriction, which imposes restrictions on the owner's ability to transfer the property. The Resale Restriction caps the sales price and prevents the owner from selling at a profit during its term.

In 2015, the RDA's interest in these properties was turned over to the City as the Successor Housing Agency. HHCS staff is reviewing all of the projects and loans in the RDA portfolio in order to develop a monitoring plan.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability effects related to this recommendation.

RATIONALE FOR RECOMMENDATION

The program was structured to reward borrowers who stayed in their homes for 30 years. Mr. Ahern has lived in his home for 29 years, and would continue living there if his health permitted.

The terms of the RDA Deferred Loan are not competitive in today's market, and it is unlikely Mr. Ahern could find an eligible purchaser unless the loan was forgiven. If the loan remained, a new purchaser would assume the \$77,000 principal as well as up to \$2 million in accrued interest (though at no point would the purchaser owe more than the property's market value). The loan term would be reset to 30 years, and the interest would continue to compound annually at 12%.

ALTERNATIVE ACTIONS CONSIDERED

If only the loan was forgiven and the resale restrictions remained, Mr. Ahern or his estate could likely find a buyer who meets the eligibility requirements set forth in the Resale Restriction, and the new buyer would benefit from a windfall within six years of purchase. The Resale Restriction caps the sales price, which could be as low as \$58,000 if the loan was forgiven. When the Resale Restriction expires in 2022, the new buyer could sell the property at market rate, which Zillow currently estimates at \$750,000. If the loan and Resale Restriction are both removed upon Mr. Ahern's death, his estate would benefit from the increased value. In light of Mr. Ahern's long-term participation in the program and residency in West Berkeley, it is more appropriate that the appreciation on the home price go to his estate instead of a new buyer after relatively short-term residency.

CONTACT PERSON

Jenny Wyant, Community Development Project Coordinator, HHCS, 510-981-5228

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

FORGIVENESS OF FORMER REDEVELOPMENT AGENCY LOAN AND RELEASE  
OF RESALE RESTRICTIONS ON 1613 5<sup>th</sup> STREET

WHEREAS, the Redevelopment Agency of the City of Berkeley authorized the sale of 1613 5<sup>th</sup> Street to Colman Ahern and his partner Cheryl Wade in 1987 with resolution number 1052; and

WHEREAS, the Redevelopment Agency loaned \$77,000 to Mr. Ahern and Ms. Wade as a deferred loan for the purchase of their home , which was secured by a deed of trust recorded November 12, 1987 in the official records of Alameda County as document number 87-305547; and

WHEREAS, the California Supreme Court action in the *California Redevelopment Association v. Matosantos* case dissolved all Redevelopment Agencies as of February 1, 2012; and

WHEREAS, the City of Berkeley is the designated Successor Housing Agency to the former Redevelopment Agency, with the authority to manage its housing assets; and

WHEREAS, the \$77,000 deferred loan was structured to be forgiven in full in November 2017, after 30 years of borrower occupancy; and

WHEREAS, in conjunction with the loan, the Redevelopment Agency recorded a 35-year resale restriction against the property (recorded November 12, 1987 in the official records of Alameda County as document number 87-305548), which imposes limitations on property transfers; and

WHEREAS, Ms. Wade died in 2013 and Mr. Ahern is now the sole owner of the property; and

WHEREAS, Mr. Ahern is receiving hospice care and may not live to November 2017; and

WHEREAS, the deferred loan is assumable, but the 12% compounding interest and 30-year term makes resale of the home prohibitive.

NOW THEREFORE, BE IT RESOLVED by the Successor Agency to the Berkeley Redevelopment Agency of the City of Berkeley, that it approves forgiving the principal and interest on Mr. Ahern's \$77,000 deferred loan and releasing the resale restriction upon his death if he has no surviving spouse, children, or joint tenant.

BE IT FURTHER RESOLVED that the Executive Officer, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of the City Clerk.

